



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 23, 1994

Mr. Lloyd Garza
City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR94-129

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 20713.

The City of San Antonio Health Department (the "department") received an open records request for, *inter alia*, "the front and back of any complaints [the department] has received regarding Ruiz Restaurant between January 1, 1993 and the date [of the request]. You state that you have released to the requestor the only complaint held by the department for the specified dates, but that you have withheld the name of the individual who made the complaint. You seek to withhold the complainant's name pursuant to the informer's privilege as incorporated in section 552.101 (former section 3(a)(1)) of the Open Records Act.

For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 391 (1983); 191 (1978). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:


¹The 73rd Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. (Emphasis added.)

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). In this instance, it is apparent to this office that the complainant is reporting a potential violation of one or more city health ordinances that the department is responsible for enforcing. Accordingly, the department may withhold the complainant's identity pursuant to the informer's privilege.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker
Assistant Attorney General
Open Government Section

WW/RWP/rho

²The requestor cites Open Records Decision Nos. 350, 332 (1982), and 210 (1978) as authority for making the identity of the complainant public. We note, however, that neither Open Records Decision No. 332 nor 210 involved reports of potential violations of the law; the informer's privilege therefore was inapplicable in those instances. *See* Open Records Decision No. 515 (1988). In Open Records Decision No. 350, this office held that the identities of individuals who had filed complaints against police officers were public information only because the police officers who were the subjects of the complaints already had access to this information; because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the subject of the complaint. *See* Open Records Decision No. 208 (1978).

Ref.: ID# 20713
ID# 20734

cc: Mr. Les Mendelsohn
Speiser, Krause, Madole & Mendelsohn
2600 Nations Bank Plaza
300 Convent Street
San Antonio, Texas 78205